BEFORE THE
CALIFORNIA UNEMPLOYMENT INSURANCE APPEALS BOARD

THIS DECISION DESIGNATES FORMER BENEFIT DECISION NO. 6686 AS A PRECEDENT DECISION PURSUANT TO SECTION 409 OF THE UNEMPLOYMENT INSURANCE CODE.

In the Matter of:

DAISY M. MARIX
(Claimant-Respondent)

PRECEDENT
BENEFIT DECISION
No. P-B-266

FORMERLY
BENEFIT DECISION
No. 6686

S.S.A. No.

OCCIDENTAL LIFE INSURANCE
COMPANY OF CALIFORNIA
(Employer-Appellant)
c/o Robert L. Jordan & Associates

Employer Account No.

The employer appealed from Referee's Decision No. S-18568 which held that the claimant was not disqualified for benefits under section 1256 of the Unemployment Insurance Code and that the employer's account was not relieved of charges. This decision was based on a finding that the claimant had not left her most recent work voluntarily without good cause but, rather, that she had been discharged by the employer for reasons not constituting misconduct in connection with her work. No determination was issued by the department nor was any decision rendered by the referee relating to the claimant's eligibility for benefits under the domestic leaving of work provisions of section 1264 of the code. Written argument was filed by the employer.

STATEMENT OF FACTS

The claimant was last employed by the above employer from April 2, 1959 to September 23, 1960, as a stenographer-clerk at a final wage of $275 per month. At the end of her seventh month of pregnancy, the claimant

was required to leave her work in accordance with established company policies, even though she was ready and able to continue working. The claimant was given a "termination interview" by a representative of the employer's personnel section on September 19, 1960. The claimant's work had been very satisfactory and in accordance with established company policy she was offered a leave of absence which, if accepted, would have extended for three months after the date of birth of the claimant's child. The claimant refused the offered leave of absence and stated that she would be too busy after the baby arrived to return to work.

The claimant was delivered of her only child on November 19, 1960. She and her husband and child moved to Springfield, Missouri, on or about July 25, 1961 to be near the claimant's elderly and ill parents. She filed a claim for benefits against California effective July 30, 1961. At that time the claimant's husband was the major support of the family. A hearing was scheduled for December 28, 1961 at Springfield, Missouri, for the purpose of obtaining the claimant's testimony, but she did not appear at the hearing.

The issues in this case are:

(1) Whether a claimant who leaves her work involuntarily because of pregnancy but who declines a leave of absence which would have permitted her to return to work at the termination of the pregnancy may be subject to the disqualifying provisions of section 1256 of the code;

(2) Whether the employer's account may be relieved of benefit charges under section 1032 of the code; and

(3) Whether the claimant may be subject to the ineligibility provisions of section 1264 of the code.

REASONS FOR DECISION

Sections 1256 and 1032 of the Unemployment Insurance Code provide in pertinent part that a claimant shall be disqualified for benefits and that the employer's account shall not be charged if the claimant leaves

her most recent work voluntarily without good cause or if she has been discharged for misconduct connected with her most recent work.

Section 1264 of the code provides in pertinent part that an individual whose marital or domestic duties cause her to resign from her employment shall not be eligible for unemployment insurance benefits for the duration of the ensuing period of unemployment and until she has secured bona fide employment subsequent to the date of such voluntary leaving. It is further provided, however, that the section shall not be applicable if the claimant was the sole or major support of her family both at the time of leaving and at the time she filed her claim for benefits.

In Benefit Decision No. 6636 /now Appeals Board Decision No. P-B-265/ we considered the case of a claimant who, upon the advice of her physician, left her work on February 26, 1960. She obtained a pregnancy leave of absence extending to December 19, 1960, but after the birth of her child and prior to the expiration of her leave of absence she resigned from her employment on September 21, 1960. Thereafter, effective September 25, 1960, she registered for work with the Department of Employment and filed a claim for benefits. In considering the effects of the events which preceded the filing of the claim for benefits effective September 25, 1960, we stated in part in that decision:

> ". . . the claimant herein did not assert any right to unemployment insurance benefits during the period of her leave of absence, but filed a claim for benefits only after she had terminated that leave by resigning from her employment. Accordingly, at the time she filed her claim, her unemployment was not due to a leaving of work on a pregnancy leave of absence, but was due directly and immediately to her voluntary act of resigning. Confronted with this factual situation, we do not believe we are compelled . . . to consider the application of sections 1256 and 1030 to the leaving of work in February 1960, or to both the leaving of work in February 1960 and in September 1960. Rather, we believe we would be consistent . . . if, in considering the total factual situation, we applied the above sections and section 1264 to the leaving of work in September 1960, which precipitated and was the immediate cause of the claimant's unemployment (Benefit Decision No. 5643)."

In Benefit Decision No. 6638, we considered a related factual situation wherein the claimant therein, when she was in her sixth month of pregnancy, was required to leave her work in accordance with established company policy, even though she was ready and able to continue working. The leave extended from June 3, 1960 to November 3, 1960. She filed a claim for benefits effective June 5 and was paid benefits to July 31, 1960, when she abandoned her claim to be with her ill father in Pennsylvania. She gave birth to her baby and returned to California on September 24, 1960. On September 26 her husband lost his California employment and the claimant thereafter accompanied him to Pennsylvania where he had prospects of work and where they intended to establish residence. On October 3, 1960, the claimant reopened her claim for benefits against California.

Under reasoning similar to that in Benefit Decision No. 6636 /now Appeals Board Decision No. P-B-265/ we held in Benefit Decision No. 6638 that the claimant, while involuntarily unemployed and on a leave of absence, was entitled to claim benefits without disqualification under sections 1256 and 1264 of the code. However, when she terminated that leave and the employer-employee relationship on September 26, 1960 by accompanying her husband to Pennsylvania where he established a new home for the family and from which she did not return to work, she left her work voluntarily and subjected herself to the ineligibility and disqualifying provisions of sections 1264 and 1256 of the code (albeit, not actually disqualified under section 1256 of the code since her leaving of work to accompany her husband to Pennsylvania was with good cause).

In contrast to the situations in Benefit Decisions Nos. 6636 /now Appeals Board Decision No. P-B-265/ and 6638, the claimant herein, at the time of involuntary leaving on September 23, 1960, declined a leave of absence which would have enabled her to return to work after the termination of her pregnancy, thereby effectively severing the employer-employee relationship, whereas in Benefit Decisions No. 6636 /now Appeals Board Decision No. P-B-265/ and 6638 the claimants initially accepted but later abandoned the leaves of absence and did not return to work for their respective employers following their pregnancies. Nevertheless, the principles established in those cases, in which we looked to the cause of the claimants' unemployment at the time the claims for benefits were filed, are applicable in the present case. By analogy

then, it was the claimant's action, in the present case, in declining a leave of absence to remain at home to care for her child which brought about the severance of the employer-employee relationship and the claimant's unemployment following the birth of her child. Therefore, the claimant herein has subjected herself to the disqualification and ineligibility provisions of sections 1256 and 1264 of the code.

Good cause for leaving work voluntarily is found to exist only where the facts disclose a real, substantial and compelling reason of such nature as would cause a reasonable person genuinely desirous of retaining employment to take similar action (Benefit Decision No. 5686). We have further held in Benefit Decision No. 6201 that when the obligation to provide care and management for a home and children can be satisfied without resorting to a voluntary termination of employment, a resignation for that reason does not constitute a leaving of work with good cause. We further held in that decision that a leaving of work for such reason was a leaving because of marital or domestic duties under section 1264 of the code.

In the present case no reason has been advanced which would show that at the time of the claimant's resignation there would be any compelling reason why she could not have returned to work within three months after the termination of her pregnancy and we, therefore, find that her leaving of work to remain at home was for reasons not constituting good cause. She is, therefore, disqualified for benefits under section 1256 of the code for a period of five weeks as provided in section 1260 of the code, and the employer's account is relieved of benefit charges under section 1032 of the code.

Finally, since the claimant resigned because of a marital or domestic duty under section 1264 of the code, and her husband was the major support of the family at the time she filed her claim for benefits, she came within the ineligibility provisions of section 1264 of the code. She shall remain ineligible thereunder until such time as she again secures bona fide employment (Benefit Decisions Nos. 6129 and 6201).

Although the department did not issue a determination under section 1264 of the code, the issue under section 1256 of the code and the ruling under section 1032 thereof involved the issue under section 1264. Therefore, in fairness to the parties and to avoid a multiplicity of administrative actions, we have considered all issues which stem from the leaving of work on September 23, 1960 (Benefit Decision No. 6638).

DECISION

The decision of the referee is reversed. The claimant is disqualified for benefits under section 1256 of the code for a period of five weeks as provided in section 1260 of the code and the employer's account is relieved of benefit charges under section 1032 of the code. The claimant is also ineligible for benefits under section 1264 of the code beginning July 30, 1961, and continuing until such time as she again secures bona fide employment.

Sacramento, California, August 24, 1962.

CALIFORNIA UNEMPLOYMENT INSURANCE APPEALS BOARD

GERALD F. MAHER, Chairman

ERNEST B. WEBB

ARNOLD L. MORSE

Pursuant to section 409 of the Unemployment Insurance Code, the above Benefit Decision No. 6638 is hereby designated as Precedent Decision No.

Sacramento, California, March 16, 1976.

CALIFORNIA UNEMPLOYMENT INSURANCE APPEALS BOARD

DON BLEWETT, Chairperson

MARILYN H. GRACE

CARL A. BRIESCHKE

HARRY K. GRAFE

RICHARD H. MARRIOTT